EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

ORIGINAL

Supreme Court, U.S.
FILED
JAN 29 1985
ALEXANDER L. STEVAS
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

NO. 84-1047

LOUIE L. WAINWRIGHT, Secretary,
Department of Corrections, State of Florida,

Petitioner,

vs.

DENNIS WAYNE SMITH,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF OF RESPONDENT ON JURISDICTION

SONDRA GOLDENFARB, Esquire
631 Chestnut Street
Clearwater, Florida 33516-5379
Telephone: (813) 446-2301

and

PATRICK D. DOHERTY, Esquire
619 Turner Street
Clearwater, Florida 33516
Telephone: (813) 443-0405

Attorneys for Respondent

RECEIVED
JAN 29 1985
OFFICE OF THE CLERK
SUPREME COURT, U.S.

73 pgs

QUESTIONS FOR REVIEW

I. Where no "reasonable trial strategy" appears from the face of the record to explain trial counsel's failure to use prior inconsistent statements in impeaching the testimony of the State's critical witnesses, does the Circuit Court of Appeals' remand for an evidentiary hearing on the issue create conflict with the standards for judging an ineffectiveness of counsel claim emunciated in Strickland v. Washington, ___ U.S. ___, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)?

II. Assuming trial counsel's performance is in fact deficient, is the Strickland "prejudice" standard met by a showing that the evidence which counsel failed to use consisted of the earliest record statements to the police by the crucial witnesses against respondent, in which the witnesses failed to make any mention whatsoever of Respondent's participation in the offense?

III. In shaping a pragmatic remedy to avoid a patent injustice to Respondent if a certain unique factual finding should be made by the District Court on remand for evidentiary hearing, does the Circuit Court of Appeals fail to give proper weight to the "presumption of correctness" normally given to a State court hearing?

TABLE OF CONTENTS

		Page
QUESTIONS FOR REVIEW		i
TABLE OF CITATIONS		iii
JURISDICTION		1
STATEMENT OF THE CASE		1
SUMMARY OF ARGUMENT		3
I		3
II		3
III		4
ARGUMENT IN OPPOSITION TO GRANTING THE WRIT		5
I	WHERE NO "REASONABLE TRIAL STRATEGY" APPEARS FROM THE FACE OF THE RECORD TO EXPLAIN TRIAL COUNSEL'S FAILURE TO USE PRIOR INCONSISTENT STATEMENTS IN IMPEACHING THE TESTIMONY OF THE STATE'S CRITICAL WITNESSES, THE CIRCUIT COURT OF APPEALS' REMAND FOR AN EVIDENTIARY HEARING ON THE ISSUE DOES NOT CREATE CONFLICT WITH THE STANDARDS FOR JUDGING AN INEFFECTIVENESS OF COUNSEL CLAIM ENUNCIATED IN STRICKLAND V. WASHINGTON, ___ U.S. ___, 104 S.CT. 2052, 80 L.ED.2D 674 (1984).	5
II	ASSUMING TRIAL COUNSEL'S PERFORMANCE IS IN FACT DEFICIENT, THE STRICKLAND "PREJUDICE" STANDARD IS MET BY A SHOWING THAT THE EVIDENCE WHICH COUNSEL FAILED TO USE CONSISTED OF THE EARLIEST RECORD STATEMENTS TO THE POLICE BY THE CRUCIAL WITNESSES AGAINST RESPONDENT, IN WHICH THE WITNESSES FAILED TO MAKE ANY MENTION WHATSOEVER OF RESPONDENT'S PARTICIPATION IN THE OFFENSE.	9
III	IN SHAPING A PRAGMATIC REMEDY TO AVOID A PATENT INJUSTICE TO RESPONDENT IF A CERTAIN UNIQUE FACTUAL FINDING SHOULD BE MADE BY THE DISTRICT COURT ON REMAND FOR EVIDENTIARY HEARING, THE CIRCUIT COURT OF APPEALS DOES NOT FAIL TO GIVE PROPER WEIGHT TO THE "PRESUMPTION OF CORRECTNESS" NORMALLY GIVEN TO A STATE COURT HEARING.	11
CONCLUSION		12
CERTIFICATE OF SERVICE		13
RESPONDENT'S APPENDIX (attached)		following p. 13

TABLE OF CITATIONS

Cases:	Page
Birge v. State, 92 So.2d 819 (Fla. 1957)	6
Brady v. Maryland, 373 U.S. 83 (1963)	2, 4, 11, 12
Cannina v. State, 175 So.2d 577 (3 DCA, Fla. 1965)	6
Carter v. State, 101 So.2d 911 (1 DCA, Fla. 1958)	6
Preston v. State, 260 So.2d 501 (Fla. 1972)	6
Strickland v. Washington, ___ U.S. ___, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)	i, 3, 5, 6, 8, 9, 10
Sumner v. Mata, 449 U.S. 539 (1981)	11
Townsend v. Sain, 372 U.S. 293 (1963)	11
Statutes:	
28 U.S.C. §2254(d)	4, 11
Rules:	
Rule 3.250, Florida Rules of Criminal Procedure	6
Miscellaneous:	
Huerta, The Last Word in Closing Arguments, 57 Fla. B. J. 334 (1983)	6

JURISDICTION

Respondent accepts Petitioner's statement of jurisdiction as being essentially correct, except insofar as the Eleventh Circuit Court of Appeals, by its own terms, did not "reverse" the federal District Court's denial of Respondent's petition for a writ of habeas corpus, but rather affirmed in part, vacated in part, and remanded for evidentiary hearing on certain specific claims. See A 3 and A 61,* Eleventh Circuit opinion.

STATEMENT OF THE CASE

In its Petition, the State accurately summarizes the factual background of the offense involved in this case. However, the State has omitted relevant facts concerning the issue at hand: Respondent Smith's claim of ineffectiveness of counsel. Smith, therefore, is impelled to supplement the State's summary.

The sole evidentiary hearing held in this cause during any post-trial proceedings involved specific police reports and transcripts wherein the very first contacts of co-perpetrator Wesley Johnson and his wife, Patricia Johnson, with law enforcement personnel were recorded. The police reports and transcripts include:

a. Offense Report (Homicide), Daytona Beach Police, dated (inside) 9/6/75 (Respondent's Exhibit K to Petition for Writ of Habeas Corpus), RA 1-9; [summarizes very first contacts of both Wesley and Patricia Johnson with police authorities in connection with the subject homicide, wherein no mention is made of Respondent Smith].

b. Sheriff's Office, Polk County, Supplementary Report, writer: Chuck Keeney, Sept. 6-10, 1975 and Aug. 15, 1975 (Respondent's Exhibit E to Petition for Writ of Habeas Corpus), RA 10-18; [summarizes Keeney's contacts with both the Johnsons].

---

*The reference "A __" refers to the State's appendix; the reference "RA __" refers to Respondent's appendix.

c. Transcript, 9/6/75, of statement of Wesley Johnson to Polk County police officers (Respondent's Exhibit Q to Petition for Writ of Habeas Corpus), RA 19-44; [wherein no reference is made to Respondent Smith in connection with the subject homicide].

d. Transcript, 9/8/75, of statement of Patricia Johnson to Polk County police officers (sent to Eleventh Circuit Court of Appeals on 6/26/84, after oral argument and pursuant to request by the Court), RA 45-50; [wherein no detail of the subject homicide is provided].

e. Transcript of telephone conversation between Patricia Johnson and Polk County police officers, undated, RA 51-53.[1]

The sole issue at the state evidentiary hearing was whether these various police reports and transcripts were provided to Smith or to his attorney in accordance with the requirements of Brady v. Maryland, 373 U.S. 83 (1963); none of the reports or transcripts had been used by Smith's attorney during the trial to impeach the testimony of either Wesley or Patricia Johnson.

After the Brady hearing, the state trial court ruled that the documents in question had been available to trial counsel; trial counsel did not testify at that hearing.

The claim on which the Eleventh Circuit has remanded the case to the District Court for evidentiary hearing relates to trial counsel's ineffectiveness specifically in terms of his failure to use any of the stated documents for impeaching one or both witnesses.

The Florida Supreme Court, the federal District Court, and the Eleventh Circuit have all stated in various opinions that Wesley Johnson's testimony, as buttressed by that of his wife, was the critical testimony against Respondent Smith, there being a paucity of any other evidence on which to convict Smith. (See for example, the Eleventh Circuit opinion at A 28.)

---

[1] The Eleventh Circuit notes at A 17 that even now, the record is not completely clear as to all the pretrial statements made by Wesley and Patricia Johnson to police authorities, and suggests that the District Court may need to expand the record with reference to such statements.

SUMMARY OF ARGUMENT

I. The State seeks certiorari on the ground that the Eleventh Circuit opinion conflicts with this Court's decision in Strickland v. Washington, ___ U. S. ___, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). However, a comparison of the latter case with this case reveals that, whereas a reasonable trial strategy for trial counsel's decisions can be gleaned from the face of the record in Strickland, no such strategy can be found in the instant record. The Eleventh Circuit opinion does not hold that such "strategy" is inconceivable; it holds merely that an evidentiary hearing will be necessary to determine if counsel had any such strategy, and therefore the case has been remanded to the District Court for a hearing on Respondent's ineffectiveness of counsel claim. There is no conflict between Strickland and this case.

II. The State argues that, even if counsel's failure to use certain impeachment evidence available to him against the State's pivotal witnesses was a deficiency, nonetheless no prejudice resulted to the defense therefrom under the Strickland test. However, where all previous court opinions have stated that the testimony of the witnesses in question was the State's whole case, and where the unused prior inconsistent statements were the earliest public testimony of the witnesses and were surrounded by an aura of solemnity because made to the police, the test -- that is, that there is a "reasonable probability" that the fact finder would have had a "reasonable doubt respecting guilt" had the statements been used for impeachment -- is met.

III. Because any exploration of trial counsel's failure to use the prior inconsistent statements for impeachment of the State's central witnesses must of necessity involve the question of whether counsel had the statements in question, the Circuit Court opinion suggests that the District Court may have to revisit the Brady issue, despite a previous state court evidentiary hearing on that claim. The State's argument that this violates 28 U. S. C. §2254(d) fails to acknowledge the potential injustice to Respondent if the District Court should rule against his claim of ineffectiveness because, factually, trial counsel never had the documents. The only reason for the Circuit Court to permit reopening of this question is an effort to prevent Respondent from being executed solely as a result of this "Catch 22." In this unique fact situation, the Circuit Court is merely following the underlying dictates of the habeas corpus philosophy, which is to assure that justice has been done.

ARGUMENT IN OPPOSITION TO GRANTING THE WRIT

I

WHERE NO "REASONABLE TRIAL STRATEGY" APPEARS FROM THE FACE OF THE RECORD TO EXPLAIN TRIAL COUNSEL'S FAILURE TO USE PRIOR INCONSISTENT STATEMENTS IN IMPEACHING THE TESTIMONY OF THE STATE'S CRITICAL WITNESSES, THE CIRCUIT COURT OF APPEALS' REMAND FOR AN EVIDENTIARY HEARING ON THE ISSUE DOES NOT CREATE CONFLICT WITH THE STANDARDS FOR JUDGING AN INEFFECTIVENESS OF COUNSEL CLAIM ENUNCIATED IN STRICKLAND V. WASHINGTON, ___ U.S. ___, 104 S.CT. 2052, 80 L.ED.2D 674 (1984).

The State urges this Court to grant certiorari on the ground that the Eleventh Circuit opinion conflicts with Strickland v. Washington,[2] ___ U.S. ___, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). There is, however, no such conflict.

In Strickland v. Washington, supra, this Court framed a two-prong test for determining ineffectiveness of counsel claims: briefly, the defendant must show both that counsel's performance was deficient and that the deficiency prejudiced the defense.

With reference to the first part of this test, this Court stated:

> Counsel...has a duty to bring to bear such skill and knowledge as will render the trial a reliable adversarial testing process...In any case presenting an ineffectiveness claim, the performance inquiry must be whether counsel's assistance was reasonable considering all the circumstances. Strickland v. Washington, supra, 104 S.Ct. at 2065, 80 L.Ed.2d at 694 (emphasis added).

Continuing, this Court further stressed the need for looking at the context in which trial counsel was operating at the time of trial:

> A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Strickland v. Washington, supra, 104 S.Ct. at 2065, 80 L.Ed.2d at 694 (emphasis added).

The Strickland case involved a duty to investigate in connection with the

---

[2] The State miscites this case; there is no Strickland v. Wainwright. The correct and complete cite is provided herein.

presentation of mitigating factors during the penalty phase of a capital case. As this Court observed, there were numerous sound strategic reasons for trial counsel's decision not to present certain evidence to the trial court -- and these reasons were patently apparent on the face of the record.[3]

The case here in question is very different. The State argues that trial counsel made a calculated decision not to use the prior inconsistent statements of either Wesley or Patricia Johnson, because he chose to attack credibility in the one instance by impugning motive (Wesley's plea bargain) and in the other by attacking character (Patricia's criminal record).

The State's argument, however, is totally unsupportable. If we recognize -- as we must from the face of the Record -- that Wesley Johnson's testimony constituted "the entire case of the State," see Eleventh Circuit opinion at A 28, then we would normally expect experienced effective trial counsel to use every tool at his disposal to destroy that testimony. As the Eleventh Circuit correctly points out (at A 28), there would be nothing inconsistent about trying to impeach by both an attack on Johnson's motive for testifying and an attack by way of prior inconsistent statements.

More importantly, the State's suggestion that trial counsel chose to rely on the plea bargain is belied by the Record. Under Fla. R. Crim. Proc. 3.250 (which has been in effect either by rule or statute since 1853, Huerta, The Last Word in Closing Arguments, 57 Fla. B. J. 334 [1983]) and interpretive case law, a defendant who puts on no testimony other than his own has the right at final argument to open and close to the jury -- a right characterized by the Florida courts an an "important," Cagnina v. State, 175 So.2d 577, 578 (3 DCA, Fla. 1965), "valuable," Carter v. State, 101 So.2d 911, 914 (1 DCA, Fla. 1958), and "substantial," Preston v. State, 260 So.2d 501, 504 (Fla. 1972), procedural right, the denial of which has repeatedly been held to constitute reversible error. See, e.g., Birge v. State, 92 So.2d 819 (Fla. 1957). Trial counsel,

---

[3]Note that in Strickland, an evidentiary hearing on ineffectiveness of counsel was in fact held, although this Court observed that such a hearing on the facts of that case was not necessary. Strickland v. Washington, supra, 104 S. Ct. at 2071, 80 L. Ed. 2d at 701-2.

by putting on the testimony of witness Parks, waived that valuable right for a piece of jailhouse gossip. And Parks' testimony was used solely to recite his overhearing of "prior inconsistent statements" by Wesley Johnson.[4] Had counsel used Johnson's own inconsistent statements to the police for impeachment purposes, he would have been able to retain this important right to open and close. No "trial strategy" is apparent from this decision by trial counsel.

Turning to the testimony of Patricia Johnson, it is again apparent that no inconsistency would have manifest itself had trial counsel attacked her credibility, both by her prior criminal record and by her prior inconsistent statements to the police about the homicide in question.

In connection with the police statements of both Wesley and Patricia Johnson, furthermore, there are inconsistencies about detail which could and should have been exploited by Respondent Smith's trial counsel (see Eleventh Circuit opinion, f.n. 9 at A 29). Any trial lawyer knows that consistent detail, especially when repeated by more than one witness (as was the case here, when both Johnsons recited similar minutiae) gains credibility for the witness, while inconsistencies as to detail plant doubts in the minds of the jurors. In fact, the assistant state attorney argued in closing argument at trial that the consistency on details between Wesley's and Patricia Johnson's testimony suggested that their story was indeed truthful. RA 54. The variations among the different pretrial statements in question and between them and trial testimony -- none of which were used by trial counsel -- further supports Respondent's claim of ineffectiveness.

The Eleventh Circuit opinion holds only that the present state of the record, absent an evidentiary hearing, does not allow it to conclude that there were valid strategic reasons for trial counsel's failure to use the statements to law enforcement authorities made by both of the Johnsons. In fact, the Eleventh Circuit invites the State, on remand, to introduce evidence at the

---

[4] In cross-examination, trial counsel also used a prison note written by Wesley Johnson, another "prior inconsistent statement."

hearing showing that counsel's failure was indeed "prompted by reasonable trial strategy." Eleventh Circuit opinion, A 34.

On the facts of the case herein, there is in sum no conflict with the standards set forth by this Court in Strickland v. Washington, supra. The cases differ in that the earlier case permitted an extrapolation of "reasonable trial strategy" on the part of counsel from the record, and this case requires a remand for an evidentiary hearing to enable the reviewing Court to determine if there was a "reasonable trial strategy" -- because, on the face of the record, no such strategy appears.

It should be noted that, for this Court to grant certiorari in the present case at the present time would probably be both premature and inadvisable. No finding has yet been entered by the Eleventh Circuit that Respondent's claim of ineffectiveness of counsel is valid; rather, the Circuit Court has determined that it can make no finding on that claim one way or the other without an evidentiary record on the issue. The case is therefore not "ripe" for this Court's review.

Secondly, the standards outlined by this Court only a short time ago in Strickland v. Washington, supra, are flexible ones. As Justice Brennan pointed out in his separate opinion in that case:

> I join the Court's opinion because I believe that the standards it sets out today will both provide helpful guidance to courts considering claims of actual ineffectiveness of counsel and also permit those courts to continue their efforts to achieve progressive development of this area of the law...[T]hose courts may continue to develop governing principles on a case-by-case basis in the common law tradition, as they have in the past. Strickland v. Washington, supra, 104 S.Ct. at 2072-3, 80 L.Ed.2d at 703.

The standards enunciated in Strickland v. Washington, supra, must percolate through the federal system for a while, to enable the lower courts to flesh out their substantive content in a meaningful way, applying the tests to a whole panoply of cases, before this Court should undertake any further restatement or refinement of the standards themselves.

II

ASSUMING TRIAL COUNSEL'S PERFORMANCE IS IN FACT DEFICIENT, THE STRICKLAND "PREJUDICE" STANDARD IS MET BY A SHOWING THAT THE EVIDENCE WHICH COUNSEL FAILED TO USE CONSISTED OF THE EARLIEST RECORD STATEMENTS TO THE POLICE BY THE CRUCIAL WITNESSES AGAINST RESPONDENT, IN WHICH THE WITNESSES FAILED TO MAKE ANY MENTION WHATSOEVER OF RESPONDENT'S PARTICIPATION IN THE OFFENSE.

Turning to the "prejudice" prong of the test for measuring ineffectiveness of counsel set out in Strickland v. Washington, ___ U.S. __, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), Respondent Smith would suggest that in fact his case clearly meets that test.

In discussing the "prejudice" requirement, this Court pointed out:

> [W]e believe that a defendant need not show that counsel's deficient conduct more likely than not altered the outcome of the case....[Rather,] the defendant must show that there is a reasonable probability that, but for counsel's unprofessional error, the result would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome. Strickland v. Washington, supra, 104 S.Ct. at 2068, 80 L.Ed.2d at 697-8 (emphasis added).

This Court amplified further:

> When a defendant challenges a conviction, the question is whether there is a reasonable probability that, absent the errors, the fact finder would have had a reasonable doubt respecting guilt...Some errors will have had a pervasive effect on the inferences to be drawn from the evidence, altering the entire evidentiary picture. Strickland v. Washington, supra, 104 S.Ct. at 2069, 80 L.Ed.2d 698-9.

In applying the above standard, it is imperative analytically here first to examine the nature of the evidence which trial counsel failed to use, and second to look at the overall trial for the context in which such failure occurred.

The "prior inconsistent statements" included either verbatim transcripts or summaries of conversations between one of the Johnsons and law enforcement personnel in which neither of the Johnsons made any mention whatsoever of Respondent Smith. The average juror is likely to invest such conversations with a solemnity similar to that invoked by the oath -- as a general rule, one simply does not lie to police officers. In addition, these conversations are

the earliest recorded evidence of what the Johnsons told anyone publicly, apparently, concerning the homicide about which they later testified at Respondent's trial. Both because of their being early statements and because of their having been made to the authorities, these particular prior inconsistent statements made by the Johnsons would have carried substantial weight with a jury of laymen -- certainly, in the case of Wesley Johnson, far more weight than either a scribbled "confession" note given in prison to co-inmate Respondent Smith, or overheard jailhouse conversation between inmates.

In addition, the Eleventh Circuit, in discussing the prejudice aspect, refers to the fact (noted earlier in this Brief) that the State's entire case rested on Wesley Johnson's testimony, as supported by that of his wife. See opinion at A 28. The jury's decision as to Smith's guilt or innocence, in other words, turned entirely on whether they believed Wesley Johnson's testimony. To suggest that there is no reasonable probability that a reasonable doubt could have arisen in the minds of the jurors had they heard that the Johnsons' very first statements to the police made no reference whatsoever to Respondent Smith is patently absurd. Thus, in terms of the prejudice standard set forth in Strickland v. Washington, supra, the Eleventh Circuit opinion is completely in accord with this Court's decision -- there is no conflict which warrants the granting of the State's Petition for Certiorari.

III

IN SHAPING A PRAGMATIC REMEDY TO AVOID A PATENT INJUSTICE TO RESPONDENT IF A CERTAIN UNIQUE FACTUAL FINDING SHOULD BE MADE BY THE DISTRICT COURT ON REMAND FOR EVIDENTIARY HEARING, THE CIRCUIT COURT OF APPEALS DOES NOT FAIL TO GIVE PROPER WEIGHT TO THE "PRESUMPTION OF CORRECTNESS" NORMALLY GIVEN TO A STATE COURT HEARING.

The State complains that, as part of its remand of this case back to the District Court for an evidentiary hearing, the Eleventh Circuit is also allowing the District Court to reopen an issue which was the subject of a "full and fair hearing" in the state courts -- to wit, did trial counsel receive or have access to the various police reports and transcripts which he did not use in impeaching either of the Johnsons? The State claims that, by permitting the District Court to reexamine this issue, the Eleventh Circuit opinion is in conflict with several prior decisions of this Court, specifically Townsend v. Sain, 372 U.S. 293 (1963) and Sumner v. Mata, 449 U.S. 539 (1981) as well as with the statutory directive contained in 28 U.S.C. §2254(d).

However, in dealing with the so-called Brady issue, the Eleventh Circuit is merely fashioning a pragmatic solution to a very difficult and unique problem which arises in this case.

The Circuit Court specifically states that it is not passing on the question of whether the state court hearing which considered the Brady claim was "full and fair." A 36. Rather, the Circuit Court is attempting to avoid a potential "trap" for the Respondent which would result in a serious injustice: if the District Court on remand determines that trial counsel did not use the Johnsons' prior inconsistent statements because he did not have them, then trial counsel clearly was not "ineffective" -- but that factual finding (that he did not have the documents) would be in conflict with the state court's factual finding to the contrary. Unless the District Court has the freedom to revisit the Brady factual conclusions, then:

> Smith will be confronted with a variation of Catch-22 created in part by 28 U.S.C. §2254(d). The State could

> presumably argue that the state court's finding that the statements were available is a historical fact entitled to a presumption of correctness, but that counsel rendered effective assistance under the circumstances because the statements were, in fact, unavailable. Eleventh Circuit opinion, A 37.

To prevent the State from being able to exploit this manifest injustice to Respondent, the Eleventh Circuit virtually directs the District Court to issue the writ under Brady v. Maryland, 373 U.S. 83 (1963), if this scenario eventuates.

Because it is limited to the unique facts presented by this case, the Circuit Court opinion in no way "conflicts" with prior decisions of this Court vis a vis the presumption of correctness normally afforded state court proceedings.

CONCLUSION

For the above-stated reasons, Respondent Smith respectfully urges this Court to deny certiorari.

Respectfully submitted,

Sondra Goldenfarb

SONDRA GOLDENFARB, Esquire
631 Chestnut Street
Clearwater, Florida 33516-5379
Telephone: (813) 446-2301

and

Patrick D. Doherty

PATRICK D. DOHERTY, Esquire
619 Turner Street
Clearwater, Florida 33516
Telephone: (813) 443-0405

Attorneys for Respondent

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a copy of the foregoing has been furnished by regular U. S. Mail to counsel for Petitioner, Assistant Attorney General Theda James Davis, Park Trammell Guilding - Room 804, 1313 Tampa Street, Tampa, Florida 33602, this 28th day of January, 1985.

SONDRA GOLDENFARB, Esquire
631 Chestnut Street
Clearwater, Florida 33516-5379
Telephone: (813) 446-2301

and

PATRICK D. DOHERTY, Esquire
619 Turner Street
Clearwater, Florida 33516
Telephone: (813) 443-0405

Attorneys for Respondent

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

NO. 84-1047

LOUIE L. WAINWRIGHT, Secretary,
Department of Corrections, State of Florida,

Petitioner,

vs.

DENNIS WAYNE SMITH,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

RESPONDENT'S APPENDIX TO BRIEF OF RESPONDENT ON JURISDICTION

SONDRA GOLDENFARB, Esquire
631 Chestnut Street
Clearwater, Florida 33516-5379
Telephone: (813) 446-2301

and

PATRICK D. DOHERTY, Esquire
619 Turner Street
Clearwater, Florida 33516
Telephone: (813) 443-0405

Attorneys for Respondent

INDEX TO RESPONDENT'S APPENDIX

	Page
Offense Report (Homicide), Daytona Beach Police, dated (inside) 9/6/75 (Respondent's Exhibit K to Petition for Writ of Habeas Corpus)	RA 1 - 9
Sheriff's Office, Polk County, Supplementary Report, Writer: Chuck Keeney, Sept. 6-10, 1975 and Aug. 15, 1975 (Respondent's Exhibit E to Petition for Writ of Habeas Corpus)	RA 10 - 18
Transcript, 9/6/75, of statement of Wesley Johnson to Polk County police officers (Respondent's Exhibit Q to Petition for Writ of Habeas Corpus)	RA 19 - 44
Transcript, 9/8/75, of statement of Patricia Johnson to Polk County police officers (sent to Eleventh Circuit Court of Appeals on 6/26/84, after oral argument and pursuant to request by the Court)	RA 45 - 50
Transcript of telephone conversation between Patricia Johnson and Polk County police officers, undated	RA 51 - 53
Portion of Closing Argument, March 25, 1976 Assistant State Attorney Monterey Campbell	RA 54

4-
205406 CR-3618
36207
36211

OFFENSE REPORT
2. ZONE NO 52 NOT FOR PUBLICATION P1
3. OFFENSE HOMICIDE (OUTSIDE)
4. DATE 090675 5. DAY OF WEEK 7 6. TIME 0052 hrs.
7. COMPLAINANT Polk County S.O. 8. SEX-C 9. AGE
10. ADDRESS Lakeland,Fl. 11. PHONE
12. PLACE OF EMPLOYMENT
13. ADDRESS 14. PHONE
15. CORPORATION OR OWNER
16. ADDRESS 17. PHONE
18. REPORTED BY Off. L.E.Troha 19. SEX-C 20. AG
21. ADDRESS 22. PHONE
23. PLACE OF OCCURRENCE 24. DATE AND TIME OF OFFENSE
25. REPORT INVESTIGATED BY Off. L.E.Troha 9759 26. DATE 090675
This Offense is Declared: Unfounded ( ) Cleared by Arrest (
Exceptionally Cleared ( ) Recovery ( )

27. PERSONS ARRESTED

	SEX-C	AGE
	SEX-C	AGE
	SEX-C	AGE
	SEX-C	AGE

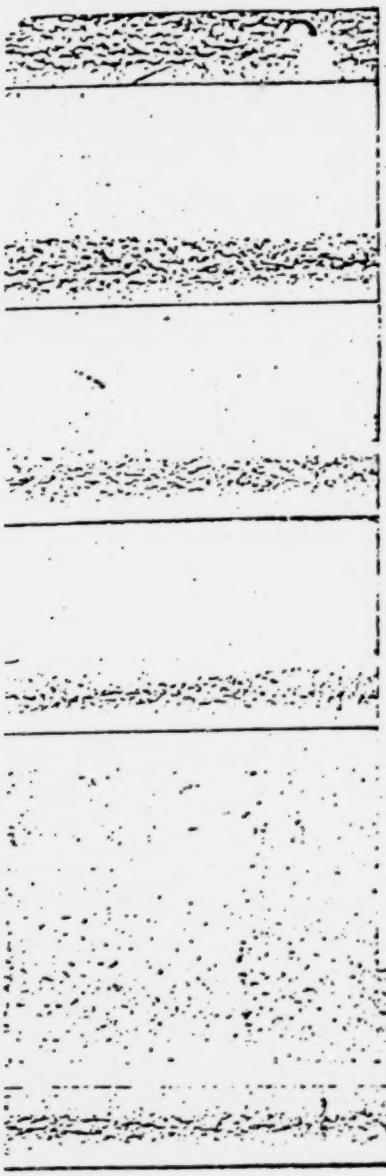
DESCRIPTION OF CAR

28. MAKE 29. MODEL 30. YEAR
31. COLOR 32. TAG NO.
33. VIN NO.
34. REGISTERED OWNER
35. ADDRESS
36. INSURANCE CO.

UCR 01A

RECEIVED IN MAIL 9-11-75

EXHIBIT K.



patched to the 7-11 Store, 633 North Oleander just north of Seabreeze in reference to a w/m who stated he had commited three homicides and wanted to turn himself in. This officer pulled in the 7-11 Store parking lot and a w/m and a w/f came walking up to th patrol car. The w/m stated, "are you here to pick me up, I am the one who called the station." The w/m started to say something else and this writer stopped him and advised him of his rights. I then asked him if he understood his rights and he stated he did. This officer shook him down and placed him i the back of my police car. The w/m is Wesley Irvin Johnson, of 314 University, dob 1-18-56. Johnson's wife, Patty Johnson was allowed to sit in the front seat and taken to the station also. On the way to the station he stated he had killed three people. One was approximately two years ago in Lakeland. He said the subject was a b/m named Mac who was a homosexual. He stated he shot him with a 410 sawed off shotgun. The b/m was in the trunk of a car (Chevrol Impala). He stated he then set the car on fire. Th was at an abandoned black bar near I-4 in Polk Count He stated he robbed the b/m of six dollars before killing him. He said the second person he killed wa a w/m approximately two or three months ago. He picked the w/m up at the Green Parrot Bar which is a gay bar. Johnson and another w/m, Birdman took this w/m Johnson picked up in the bar to Johnson's apartm and robbed him of $11. Johnson and Birdman then mad the w/m get in the trunk of his car and Birdman drov Birdman ran off the road and hit something and damaged the right front of the vehicle and the tire was flat. Johnson then drove on the flat tire to where he stopped and opened the trunk and took a tir iron and ice pick and stabbed the w/m to death. Joh son and Birdman got another car somehow and went to the Waterloo area. Johnson took the same icepick he

CONT'D

had stabbed the w/m earlier that night with and stabbed Birdman to death with it. Johnson then put the body in the trunk and took it to an old abandoned orange grove. There he hit the body in thehead with a shovel and dug a shallow grave and put the body in it and covered it up. Det. Jenkins and this officer interviewed Johnson in the Detective Bureau. He was read his rights and signed a waiver. He agreed to let us tap the interview which we did. He went into detail of each homicide. Detective Jenkins is making a supplement with all the details. Off. Bridges interviewed Patty Johnson. (See his supplement in reference to what Patty Johnson said). Det. Jenkins called the Polk County S.O. and they came over and picked Johnson up. Polk County S.O. request that any press personnel be referred to their department.

N.F.I.

Off. L.E.Troha

LET/sav

Report Investigated By Date

Daytona Beach
Police

SUPPLEMENTARY OFFENSE REPORT

Offense Homicide (Outside) Comp No.
Complainant Polk Co. S.O. D-3665
Address Lakeland, Fla.

On Sat., 9/6/75, this writer was advised that Unit 34, Officer L. B. Troha was enroute to the 7-11 Store on North Oleander reference a W/M who was confessing to three murders over the phone. After Off. Troha picked up the subject I met with him at the Detective Division where the subject was identified as:
Wesley Irvin Johnson, W/M, age 19
DOB: 1/18/56 presently residing at
314 University Blvd.
DBPD ID# 100266

With Johnson and Troha was Johnson's wife, Patricia Johnson, W/F, age 21, DOB: 8/24/54, same address.

This writer had Officer Bridges and Off. May interview Mrs Johnson while this writer and Off. Troha interviewed Mr Johnson.

Wesley Johnson was advised of his constitutional rights by this writer and Johnson signed a waiver form. Johnson agreed to this writer taping the interview.

Johnson then told us that he had murdered three people in the Lakeland, Fla. area.

Report Investigated By (cont) Date

J. H. J. 0630
9/6/75

Daytona Beach
Police 2.

SUPPLEMENTARY OFFENSE REPORT

Offense Homicide (Outside) Comp. No.
Complainant Polk Co. S. O. D-3665
Address Lakeland, Fla.

The first homicide he told us about (according to him) happened about three to three and a half years ago. He related it as follows:
Stated that he had been robbing queers in the Lakeland area. Stated he met up with a black homosexual named "Mack". Johnson described Mack as B/M, 35-45. Stated he had seen Mack around for about 3 months. Stated he picked Mack up and took him (in Mack's car) about 2½ miles outside of Lakeland. Said they stopped near I-4 and near an old abandoned bar. Mack's car was (according to Johnson) a 68-69 Impala (Chevrolet), white in color Stated he robbed Mack of $6.00 and forced Mack into the trunk of the car at gunpoint. Stated the gun he used a was a .410 shotgun that had a sawed off barrel Stated Mack was in the trunk of the car and he closed the trunk lid. Mack had the car keys in his pocket. Johnson then shot into the trunk with the shotgun a couple of times. To make sure Mack was dead, Johnson said he pulled the back seat out of the car and shot Mack again. Johnson said he then got back into Lakeland where he bought some gas in a can at the gas station across from the Lakeland Memorial Hospital. He then went

Report Investigated By (cont) Date

J. H. J. 0630
9/6/75

RA 4

(2)

Daytona Beach
Police 3.

SUPPLEMENTARY OFFENSE REPORT

Offense Homicide (outside) Comp. No.
Complainant Polk Co. S. O. D-3665
Address Lakeland, Fla.

back to where Mack's car was and poured the gasoline all over the car and set it afire. Stated that when he ran from the scene the car was completly engulfed in flames. When asked why he killed Mack, Johnson replied, "For the hell of it and cause he was a goddamned nigger queer".

In reference to the second homicide that Johnson confessed to, he stated that the victim was a W/M, 29-30 yrs old, blonde hair, 6-0, 200#. Stated the subject was a homosexual. Stated he met the W/M in the Green Parrot (apparently a gay bar) in Lakeland. Stated on this murder an accomplice was with him on it. Johnson only know his accomplice as "Birdman". Stated Birdman had a tattoo of a bird on one of his hands.- Stated he and Birdman had been robbing queers. Stated this was about 2-3 months ago when he and his wife was seperated. Stated they picked up this W/M and took his car to Johnson's apartment which was located in the Wabash area of Lakeland. Upon arrival at his apt. Johnson immediatly grabbed the W/M from behind and around his neck. Birdman put an icepick to the W/M's chest. They robbed the W/M of ~~XXXX~~ $11.00. The W/M pleaded for them not to hurt him and John-

Report Investigated By (cont) Date

J. H. J. 0630
8/6/75

Daytona Beach
Police 4.

SUPPLEMENTARY OFFENSE REPORT

Offense Homicide (outside) Comp. No.
Complainant Polk Co. S.O. D-3665
Address Lakeland, Fla.

son assurred the W/M that they wouldn't hurt him. Johnson said he convinced the W/M that all they were going to do was put him in the trunk of his car (the back car) and drive him to a spot just outside Lakeland and leave him there. Johnson said he told the subject he could then kick out the back seat and get out after they had gone.

Johnson said Birdman drove the car which he described as a 68-70 Chevrolet, factory blue in color. Stated the W/M was in the trunk and they drove out to the Kathleen area. On or near a sharpe hairpin curve Birdman ran off the road and struck something causing the tire to blow out and causing some damage to the right front of the car. From that point Johnson said he drove the car on around the hairpin curve until the car stuck. State this was about 1-1½ miles out of Lakeland. Johnson said where the car stuck there was a house 200-300 yards away. Stated when the car stuck he knew he had to kill both the W/M and Birdman. Johnson then said the only reason he killed Birdman later was because Birdman made him kill the W/M. At any rate, Johnson said he got out of the W/M's car and opened the trunk.

Report Investigated By (cont) Date

J. H. J. 0630
8/6/75

RA 5

(3)

Daytona Beach
Police 5.

SUPPLEMENTARY OFFENSE REPORT

Offense Homicide (outside) Comp. No.
Complainant Polk Co. S.O. D-3665
Address Lakeland, Fla.

Stated that when he opened the trunk he had a tire jack (the type with a pointed end) in his hand. Johnson said the ~~XXXX~~ W/M pleaded for his life but Johnson ~~xx~~ said he, using both hands on the tire jack, stabbed the W/M in the chest several times. Said he then took the ice pick that Birdman had and stabbed the W/M several more times.

Johnson said he ~~xxxx~~ and Birdman got into another car that was there. When questioned about this other car all Johnson would say was the car "was there", leaving this writer to believe that he and Birdman may have stolen the car. Anyway, Johnson said that he and Birdman went to a gas station and bought some gas and returned to the W/M's car and poured the gasoline all over the car and set it afire. They then left in the other car.

Johnson then stated that they drove to an area known as "Waterloo" which was a camp area with a lake. There Johnson said he stabbed Birdman with the icepick numerous times. Stated he also tried to drown him, but he was sure he was dead. Stated he wrapped Birdmah in a blanket

Report Investigated By (cont) Date

Det. J. W. Jenkins 0630 9/6/75

Daytona Beach
Police 6.

SUPPLEMENTARY OFFENSE REPORT

Offense Homicide (outside) Comp. No.
Complainant Polk Co. S.O. D-3665
Address Lakeland, Fla.

and put him in the trunk of the car. Stated that he drove to an area known as the Highlands. He pulled off a two lane paved highway into an orange grove Stated he drove about 500-600 ~~xxx~~ yards into the grove and turned left onto a spray truck road. He went another 200 yards or so and stopped. He then drug Birdman about 50 yards off the spray truck road where he dug a 2' shallow grave and buried him.

Johnson said the orange grove was 1-1½ miles outside of Lakeland.

Johnson said that when he buried Birdman he bashed him in the head with the shovel

For information concerning the interview of Mrs Johnson, refer to Officer Bridges supplement. In conferring with Off. Bridges it was found that she told ~~xx~~ Jones and Off. May essentially the same thing but not in as much detail of course

This writer placed a call to Polk Co. S. O. and spoke to Sgt George Elliott. He confirmed that they had investigated two murders where the victims had been burnt in the trunks of the cars, one about two

Report Investigated By (cont) Date

J. W. J. 0630 9/6/75

RA 6

(4)

Daytona Beach
Police 6.

SUPPLEMENTARY OFFENSE REPORT

Offense Homicide (Outside) Comp No
Complainant Polk Co. S. O. D-3665
Address Lakeland, Fla.

1049 Jewell St, Lakeland, Fla. He was murdered on 7/29/75.

The third victim (Birdman) is James Wagner, W/M, about 20 years old who lived on Herschell St in Lakeland. Det. Reed confirmed that Wagner was apparent killed the same night Arnsderff was kil led as their investigation revealed the Wagner hadn't been seen since then.

For additional information refer to OR# D-1729 where this writer and several Tact Squad men had Johnson under surv- eillance for some time Ea due to state- ments he made about various criminal activities, however we never saw him leave his house on University.

Johnson was turned over to Det Reed and Johnson was not booked into our Jail.

Det. Reed requests that any further in- quires from the news media about this i vestigation be refered to the Polk Co. S. O.

Case cleared by arrest and continued.

Det. J. N. Jenkins 0630

Report Investigated By 9/6/75 Date

Daytona Beach
Police 7.

SUPPLEMENTARY OFFENSE REPORT

Offense Homicide (Outside) Comp No
Complainant Polk Co. S. O. D-3665
Address Lakeland, Fla.

years ago and another a month or two ago. He stated he would have his inves- tigator immediatly call me.

A few minutes later I received a call from Det. Norm Reed of the Polk Co. S.O.

Det. Reed stated that he had just recen- tly developed Wesley Johnson as a prime suspect in the two murders and he also suspected that Birdman had been killed too, but had never found him. Stated he was immediatly enroute to take custody of Johnson.

At 5:20 AM, 9/6/75, Det. Reed and Sgt Elliott arrived at the DBPD. They lis- tened to the taped interview and reques- ted it be turned over to them as evidence

The tape was turned over to Det Reed. (see attached supplement)

Det. Reed advised that the B/M that was killed was Caleb McDowell, N/M, 39 of 636 West Eight St, Lakeland, Fla. The subject was murdered on 8/3/75.

The W/M homosexual killed in the burning car (the 2nd victim) was John Mitchell Arnsdorff, W/M, 39 of

Report Investigated By (cont) Date

(5)

Daytona Beach
Police

SUPPLEMENTARY OFFENSE REPORT

Offense Homicide (Outside) Comp No.
Complainant Polk Co. S. O. D-3665
Address Lakeland, Fla.

Received from the Daytona Beach Police Dept the following evidence:

one (1) TDK cassette tape containing the confession of Wesley Irvin Johnson.

Person Receiving Evidence:

Det. Norm Reed
Polk County Sheriff's Dept.

Person Relinquishing Evidence:

Det. J. H. Jenkins
Daytona Beach PD

Witness: Sgt George Elliott

Report Investigated By Polk Co.S.O. Date

DATE: September 6, 1975

Daytona Beach
Police

SUPPLEMENTARY OFFENSE REPORT

Offense Homicide-Outside Comp. No.
Complainant Polk County S.O. D-3665
Address Lakeland, Florida

(1)

On 09-06-75 at 01:30AM this officer interviewed Patricia Johnson W/F age 31, DOB 8-24-44 of 314 University Blvd.

Patricia Johnson is married to Wesley I. Johnson W/M age 19, DOB 1-18-[illegible] of the same address.

Patricia Johnson stated that she met her husband on March of 1974 and they married in August of 1974.

Patricia Johnson stated that just prior to their marriage, that Wesley told her that he had killed a man in Lakeland (Polk County), Florida. Patricia stated that Wesley told her that he tried to rob a W/M homosexual and ended up shooting him then put him in his vehicle and set the vehicle on fire with a can of gasoline.

Patricia Johnson stated that several times since their marriage that they have gotten into a fight and Wesley has gone back to Lakeland where he is originally from.

About 2 or 3 months ago(June or July) Patricia stated that Wesley told her that he had killed two more people in Lakeland during one of his trips back there.

He told Patricia that one of the subjects was a W/M and one a W/M and that one was a homosexual and the other was

Report Investigated By Date

R.A. 8

(16)

Daytona Beach
Police

SUPPLEMENTARY OFFENSE REPORT

Offense Homicide-Outside - Comp. No.
Complainant Polk County S.O. D-3665
Address Lakeland, Florida

(2)

He gave no motive as to why he killed them but stated he killed one with an ice pick and the other with a tire iron. Patricia says that he told her he buried both in an orange grove.

Subject Wesley I. Johnson has a definite mental problem according to his wife and earlier this year he shot himself in the head and spend about 1 week in the Halifax Hospital 1400 Ward.

Patricia Johnson says her husband dreams about the killings often and that it bothers him but that he doesn't talk about them except when he's drinking.

She says that he often says that he has to urge to go out and kill and that he doesshave a bad violent temper and he usually takes the temper out on the furniture but tonight he killed a cat with his bare hands.

Patricia Johnson says her husband spent 1 year on the Okeechobee shcool for boys when he was a juvenile and besides that she only knows about him being arrested one time and that was several months ago on Main St in Daytona Beach for fighting.

A check with records revealed that Wesley I. Johnson was arrested on 3-19-75 for Disorderly Intoxication, ID # 100266.

Report Investigated By Date

D. L. Bridges

21 1975

Daytona Beach
Police

SUPPLEMENTARY OFFENSE REPORT

Offense Homicide-Outside Comp.
Complainant Polk County S.O. D-3(
Address Lakeland, Florida

(3)

Patricia Johnson stated that she believes her husband is capable of killing another human being but she isn't sure if the stories he tells her are truth or not.

Patricia Johnson stated that she doesn't know any more particulars about the supposed killings. She stated that her husband never said if he knew the subjects and he never mentioned anything about their names or ages, etc.

Wesley Johnsons mother still lives in Lakeland but Patricia Johnson would not tell this officer her address because she didn't want her to find about it.

No further information or police action taken at this time.

Off. R.D. May was present during the entire interview of Patricia Johnson.

Off. D.L. Bridges
ID# 9025

D. L. Bridges

Report Investigated By D

CIRCUIT COURT
POLK COUNTY

CERTIFIED TO BE A TRUE COPY
Attest: E.D. "BUD" DIXON, Clerk
Circuit Court - Criminal Division
By: Debra J. Hart
Deputy Clerk

RA 9

Section	SHERIFF'S OFFICE SUPPLEMENTARY REPORT MONROE BRANNEN, SHERIFF POLK COUNTY, BARTOW, FLORIDA	Complaint P- CC# 36211 C/R# 36207, 205406

September 6, 1975

r:· Lt. Chuck Keeney

pproximately 3:00 A.M., this date, Writer received a call from Det. of the Polk County Sheriff's Department who had received a call from th na Police Department stating that a subject had come into their depart- and confessed to being involved in three homicides in Polk County. riter instructed Det. Reed at this time, to go to Daytona Beach Police rtment and take subject into custody and return him to Polk County. Thi ect's names is "Wesley Irvin Johnson", a white male, nineteen years of a At approximately 8:30 A.M., this date Writer met with Det. Reed at the land Sub-Station where he had brought the subject from Daytona Police rtment. In a brief interview with the defendant, Wesley Irvin Johnson, er learned that he was involved in the homicide of Caleb McDowell, CC# and the homicide investigation of John Mitchell Arnsdorff, CC# 36211 a lso stated that James Wagner, missing person at this point (CC# 37618) also a victim of a homicide and that he, Johnson was responsible for th h of Wagner.

In brief, concerning the death of Arnsdorff and Wagner, Johnson related riter the following story: That he had met Wagner in a bar on South Fl ue, Lakeland, Florida and from there went to the Green Parrot on East Street in Lakeland, Fla. where they met Arnsdorff and then from there went to an apartment occuppied by Johnson on Swindell Avenue north of rial Blvd. and after a drinking party had taken Arnsdorff to his own tment on Jewell Street in Lakeland, where they robbed him and tied him placed him in the trunk of his own vehicle and drove him on the preten

Form No. 41A EXHIBIT E

Reporting Officers: | Date

g him somewhere just to leave him unharmed. According to Johnson, en-
to the place where they were to abandon him, the car struck an abutmen
iffin Road. Then the vehicle was driven with the damaged right front
to the point where it was finally found burned with the body of Arns-
in the trunk.

n his verbal statement to Writer, Johnson stated that he stabbed Arns-
with a tire iron several times before setting the vehicle on fire. Th
lone in the presence of James Wagner. The story gets a little vague at
point. Wesley Johnson deliberatlely evades the question and the point
second vehicle or any other parties other than himself and Wagner. He
state that they went to a service station after the vehicle's damaged
l got stuck in the dirt and purchased some gasoline. They brought it b
car and doused the vehicle with the same. They then set the vehicle on
and left the area. They went to an area known as "Waterloo", which is
ing and swimming area located in the same area as the old YMCA campgrou
of Highway 33, just north of the Lakeland city limits, south of the Old
ee Road or Deaton Estates. At this point, Johnson states that he becar
ttle bit uneasy about Wagner and concerned about him being able to kee
mouth shut and decided that he would have to do something with Wagner.
his point, Johnson states that he stabbed Wagner with an ice pick in t
st several times and then when he was still not dead he held his head u
water until he thought that he was dead or he had stopped moving. He
tes that he went from this point to a point in a grove in the Lakeland
hlands, south of Lakeland and there buried the body of James Wagner.

Sheriff's Form No. 41A

Investigating Officers: | Date

ge -3-

It may be noted in this summary that at no time did Johnson mention me of "Lurch", Dennis Wayne Smith or the vehicle used to carry out the the offense after the burning of Arnsdorff's vehicle.

Writer, Sheriff Brannen, Sgt. Lang, Sgt. Boydston, Sgt. Stewart, Sgt n Taylor, Det. Norm Reed along with Public Relations Officer Dan Taylor e defendant went to a grove in the Highlands under the direction of the fendant. In this grove all officers took part in a search for the body James Wagner. This search continued on through the entire day, which turday, September the sixth. The search was not a success, the body wa t found at this time. Johnson stated that he was in such a drunken con on having been drinking tequila and beer mixed that he could not rememb e exact location of James Wagner.

Writer and Sheriff Brannen did transport Wesley Irvin Johnson to the unty Jail where he was booked in on three counts of first degree murder would be involving the deaths of one Caleb McDowell, John Mitchell Arn d James Wagner. No bond was set at this time.

The date is now September 7, 1975, 0800 hours. Writer met with Sher annen at his home and did travel back to the Lakeland Highlands to the r the purpose of conducting another search. A search was conducted of oves in the area of Highlands City, west of Highland City. The area is dered on the north by Clubhouse Road, on the south by Central Barn Road, e west by Lakeland Highlands Road and on the east by Highlands City its arch was made by Deputies on horseback assisted by Aux. Deputies on foo rected by Sgt. Nemeth. Writer enlisted the aid of the Sheriff's plane

is search and this plane was used in making aerial infrared photographs Hoskin of the Ledger did the photography from the plane. The search tated at approximately 8:30 P.M. and concluded at 1600 hours, no body ound at this time.

/riter, in an effort to gain assistance of every agency possible in atte :very method of trying to locate a body, did contact the Air Force at 1 Air Force Base requesting further assistance with color infrared. Wri: referred to NASA and to a Capt. Morrison at a phone number of A/C 713, 0123, which is in Houston, Texas. Writer was unable to make contact wi: ne in the military at this point that had any knowledge of infrared fil: to get in touch with.

On September 8, 1975 at 0830 hours, Writer again attempted to contact , but was unable to make any connections at this point. Calvin Engh of Lakeland Ledger did contact Writer by phone this date and advise him th ibly, Senator Lawton Chiles, the United States Senator from Lakeland co ibly to able to assist in getting some action from the Air Force. Writ contact Mr. Lewis Roberts of Senator Chiles staff requesting assistance Roberts stated that he would contact the Pentagon, the Secretary of Ai: :e and ascertain what methods could be used in obtaining the assistance Air Force.

Writer did receive a call back from Mr. Roberts stating that he was un locate anyone that was familiar with this particular means of locating 1 infrared film.

September 8, 1975: Writer received a telephone call from Mrs. Patrici

nson. Mrs. Johnson requested that she be able to talk to Writer at th
eland Sub-Station. In an a recorded interview with Mrs. Johnson at th
eland Sub-Station, this date she did state that on one or more occasi
husband, Wesley Johnson talked about the murder of a black man in the
nk of a car, a 1973 (in reference to the death of Caleb McDowell, CC#7
i that he also recently had talked about having participated or had kn
ge of the homicide concerning the death of a white man, John Mitchell
nsdorff in the trunk of a car (CC# 36211 and CC# 36207) and also the f
at he had knowledge of a missing person by the name of "Wagner". The
ew with Mrs. Johnson was recorded and will be transcribed and included
is report.

ptember 8, 1975:

Writer received another call from Mr. Jim Connor of Kissimmee inqui
to the progress in the case and whether or not Johnson had told the co
ory as to was had happened in the three homicides.

ptember 8, 1975
:04 A.M.

Writer received a call from Sgt. Banks in the Communications Center
e Polk County Sheriff's Department. Sgt. Bank's stated that an anony-
ller stated that the body of Wagner was in a pit somewhere. Writer r
at a tape of this conversation be included in the report.

ptember 9, 1975

Writer contacted Hardy Pickard, Assistant State Attorney requestin
interview be set up with Wesley Johnson for the purpose of taking a

sition from Mr. Johnson. Wesley Johnson was brought to the State Attor
ce along with his appointed attorney, Dennis Maloney of the Public Defe
ce. At this time, Mr. Dennis Maloney advised Mr. Johnson that it would
er if he did not make a sworn deposition at this time. Mr. Johnson com
the wishes of his attorney and did not make a statement. Writer, for
st time in this investigation did advise Mr. Johnson that his companion
se crimes was already known and that his companion was in jail, namely I
ne Smith. Writer also informed Mr. Johnson at this time, that the vehi
d to leave the scene of the offense after Arnsdorff's car was burned wa
o in custody and certain evidence was obtained to implicate Mr. Smith i
s homicide.

tember 10, 1975

Writer received information, telephonically from Mrs. Wesley Johnson t
husband, Wesley Johnson wanted to tell the whole story about the three
ders. Writer advised Mrs. Johnson to meet him in Bartow at 11:45 A.M.,
s date and I would allow her to talk to her husband. The agreement wa
t Johnson could talk to his wife for ten minutes or longer and he woul
willing to tell the story as it was. After Writer met with Mrs. Johns
d her husband in Bartow, Johnson informed Writer that he had talked to
torney in the interim and he was advised not to talk to Writer about th
ree homicides. At this point, Wesley Johnson did tell Writer in the pr
his wife that he was with Dennis Wayne Smith on the night of these mur
d did take part in the same. Johnson also stated that he had give a co
te statement to his attorney, Jerry Hill, also with the Public Defender
fice concerning all three deaths, these deaths being McDowell, Arnsdorf

agner. Mr. Johnson made the statement that his attorney did not want t
elease this information to the State Attorney's Office until after they
ould possibly use it for "plea bargaining". Mr. Johnson stated or agre
o plead to three counts of second degree murder with the agreement that
ould turn states evidence against Dennis Wayne Smith or whoever may be
olved in these crimes. Mr. Johnson was returned to his jail cell and
riter returned to Lakeland.

eptember 10, 1975

Writer received a call from Mrs. Ann Dahlquist of Route 1 Box 679,
anor, located just north of Club House Road between Dismuke and Grand
the Highlands south of Lakeland. Mrs. Dahlquist's telephone number
6-3322, she is employed, her office number is 533-9011. Mrs. Dahlqui
ted the following information: Mrs. Dahlquist's elderly mother who h
en away on vacation in the month of July had returned on or about the
f July and three to four days from that time at approximately four or
'clock in the morning, on a night when she was unable to sleep she was
her bedroom window, which is in a mobile home, the back part of the
ing near a grove. At this point, she heard what she thought could be
truggling, working or doing some kind of physical labor, something ph
the grove immediately behind her house. Mrs. Dahlquist's mother st
e listened until she heard the men get in a vehicle,which she did no
art it up and drive out of the grove toward Club House Road. Writer
to this grove and searched the area for a grave of some kind. This
ular grove is a small grove located at the corner of Dismuke and Clu
Rd. The grove is very rough as far as driving through it is concern

grassy. While in the area, Writer did contact the owner of the grove, Bruce Wilson who lives west of the grove on Club House Road. Mrs. Wilson stated that she and her family had been gone on vacation for the most part of July and returned home on August 3, 1975. Mrs. Wilson stated that she did have the grove chopped, which would have been about the first week of July. Upon their return, on August the 3rd, Mrs. Wilson's husband, Bruce did remark that he had seen where a car had been in the grove and had driven out on to the highway. Mr. Wilson, according to his wife made the statement that he couldn't understand why anyone would have been in the grove, since it was not the fruit season and there was not any fruit to steal and that it was not a common open grove for a lover's lane and such as that. Mr. Wilson, at this time, was away in New York and Writer was unable to interview him. Mrs. Wilson said that she would be talking to her husband over the weekend and ask him if he could determine which row the vehicle came out of so that we could concentrate our search in one particular area.

Lt. Chuck Keeney

sf

POLK COUNTY, BARTOW, FLO DA | C/R# 36211

Date: August 15, 1975
Writer: Lt. Chuck Keeney

In examining some of Mr. James Wagner's personal belongings at his h plastic type-card carrier was found with the identification cards, dri license etc. of one Kathy Elizabeth Taylor of Rt. 2 Box 815 A., Dover, F as found. This item was found by Mr. Wagner by going through some of h on's, James' personal belongings in his room at their home at 1105 Harts venue in Lakeland. Mr. Wagner turned this item over to me this date. lid contact Det. Jeffries of the Plant City Police Department requesting n locating Kathy Elizabeth Taylor, of Rt. 2 Box 815 A., Dover, Florida. of this writing, no information has been received as to the whereabouts s. Taylor. Writer was unable to determine why this particular item wa James Wagner's possession at this time.

Lt. Keeney
Lakeland Sub-Station

sf

Sheriff's Form No. 61A

Investigating Officers: | Date

Classification	SHERIFF'S OFFICE	Complaint No.
Item (2)	SUPPLEMENTARY REPORT MONROE BRANNEN, SHERIFF POLK COUNTY, BARTOW, FLORIDA	CC# 36211 P3 C/R# 204506 C/R# 37618

This is 9/6/75, 1:30 A.M.. Present is Det. J. H. Jenkins, Officer L. E. Trouha. We are taking this statement of Wesley Irving Johnson, white male nineteen of 314 University Blvd..

Q. Wesley, I have advised you of your Constitutional Rights, you have signed a waiver form and do you still wish to make a statement at this time?

A. Yeah.

Q. Ok, now ----

e Voice: Just talk normal----

Q. Just forget about it cause that will pick -- it will pick it right up.

e Voice: Just talk normal----

Q. Just forget, you know the tapes there.

A. Ok.

Q. Now let's take ah----

A. Your not going me no more after this?

Q. No, we'll----

A. Ok.

Q. Remember we want to go with victim number one which is "Mc", just start right there.

A. Alright, "Mack" was the black homosexual between the age of thirty-five and forty-five.

Q. Hu-huh.

A. He was shot in the chest and in the abdo -- abdomen, I suppose, I locke him in the trunk and then I had to cut out the back seat and shoot him again and I was scared the gas tank (not audible), I was scared I was going to hit the gas tank and it was going to blow up, but I didn't I shot him, he was shot----

Q. With ah, with a four-ten?

A. --four-ten, four-ten sawed off shotgun, I don't remember the size pelle

Q. Were they laying in the trunk?

A. He was in the trunk----

Q. With the (not audible)----

A. He was -- no, he was in the trunk, the trunk shut and he had the keys with him, the car keys with him, is -- that's why I cut open the back to shoot him again to make sure they he was dead.

Q. So how many times did you shoot?

A. Between two and three times, I'm not really sure it's been quite a while.

Q. Whose car was -- was that?

A. It was his car, it was a white Chevrolet, the Chevrolet was in, hold on a minute let me think about it, it was in ah, it was, I believe between a sixty-eight and a sixty-nine white Chevrolet Impala, it was -- it was an Impala.

Q. And exactly where did this take place at?

A. This happened on Interstate I-4, off of Interstate I-4 at an abandoned bar that had been abandoned for a quite a year -- quite a few years, he was shot there and killed there.

Q. No, ah, this was (not audible) near Lakeland?

A. Yes, it was near, it was in Polk County, it was rather close to Lakeland because the gas that was bought to pour over his car and over him was bought at a ah, a gas station across the street from the Lakeland Memorial Hospital, ah I forget the name of the damn gas station (not audible) any how he was the first person I killed.

Q. Alright, let me ask you a question about "Mack", ah how long had you know Mack when -- when you shot him?

A. Ah, three months.

Q. Alright, and you knew he was a homosexual, is that right?

A. Yeah.

Q. Alright, can you tell me why you shot Mack?

A. For the hell of it.

Page -3-
Johnson, Wesley

Q. No -- no reason? Was -- was it because he had done something to you?

A. Because he was a God Damn nigger queer.

Q. Ok, how did you come about being with Mack that night?

A. Because I'd been robbing queers for about the past two or three months.

Q. Up to the death of Mack?

A. Yes.

Q. Ok----

A. And I'd met Mack through a person and we'd, I had robbed him and he I had felt like he should die----

Q. (not audible)----

A. --and so I shot him.

Q. Was it your gun?

A. Yes.

Q. And what did you -- no, let's see, after you shot him, you said you went into Lakeland and bought some gas?

A. Right----

Q. And you went back to the car?

A. Back out through the car, it was about, it was between, it was about a half hour span after the shooting.

Q. From the time that you got back to the car?

A. From the time I got back to the car.

Q. How far out of Lakeland did you have to drive?

A. We were about ah, shit, I was about -- I was about ah, well,----

Q. I mean is it a mile or two miles out of Lakeland or ten miles or five miles----

A. It was -- it was----

Classification	SHERIFF'S OFFICE SUPPLEMENTARY REPORT MONROE BRANNEN, SHERIFF POLK COUNTY, BARTOW, FLORIDA	Complaint No.

Q. -- just approximate----

A. --between -- it was between two to two and a half miles out of Lakeland because it was a lot of dirt roads, first you had to drive through the orange grove----

Q. Hu-huh.

A.. -- and then you had to go on out, I mean it was, you know it's about two and a half miles after you (not audible) crooks and turns on the road.

Q. Did you rob Mack before you ah----

A. Yes, six dollars.

Q. Six dollars, ah----

A. --robbery or----

Q. --now after you -- you said you went to town and you got the gas and you went back----

A. Right----

Q. --and ah, then you said that you poured gas all over the car?

A. I poured gas across the trunk of the car because that's where he was at he was in the trunk of the car, I poured gas across the trunk and then I poured it over the rest of the car hoping to, you know burn up my fingerprints and what not and I, you know if they can keep fingerprints in it they can check them right out and----

Q. Right.

A. --and we poured gas -- I poured gas all over and fell down, that was during the winter cause I was super drunk.

Q. Hu-huh, (not audible) all this happened you were super drunk huh?

A. Ah, I was ----

Q. On -- on what, booze or ----

A. I don't do dope.

Q. Strickly booze huh, ok.

Investigating Officers:	Date

Page -5-
Johnson, Wesley

A. The most powerful thing I do is rum, which kicks my ass.

Q. Ok, now ah, did the -- you said you ran, but to your knowledge did the car completely burn up?

A. The car was totally in flames----

Q. When you left?

A. When I left.

Q. Alright, do you remember reading about this Mack in the -- all in the papers?

A. Yeah, two days, ah, not even two days later ah, day and a half later the evening edition of the Polk County Ledger.

Q. Ok, and can you tell me about when and how long ago this was?

A. I'm sorry, no, I can't it was between, I swear to God, it was, let's see I was just about seven -- six, I was between, well, I was about fifteen when I got out of juvenile home----

Q. Hu-huh.

A. --and this happened when I got -- I was just about sixteen when it happened.

Q. And you are how old now?

A. Nineteen, ----

Q. This happened about three years ago, three and a half somewhere right in there?

A. Figure it up, yeah, whatever.

Voice: What were you in the boy's home in Ockeechobee for? You said this happend right after you got out of Ockeechobee----

A. I was in Ockeechobee for assault and battery.

Q. Talk about it or ---

A. On a police officer.

Q. Ok.

A. I didn't mean to do it, but I was flipped out on acid.

Q. Ok, alright Wes now----

A. And I didn't mean to be flipped out on acid either, some asshole gave me some acid and I flipped out.

Q. Let's talk about the number two victim.

A. Right, the number victim and number three victim happened in the same night, the same -- my wife, whose name better not be mentioned or I'll just cop out or whatever and just bullshit all----

Q. No, no we are just talking with you?

A. Ok, well----

Q. Your wife isn't involved in it at all.

A. Ok, the only thing she can say is the months we seperated in the second mur -- the second murder and the murder happened. The first murder the victim was a white caucasian, ah----

Q. You mean the second one?

A. Yes, not -- after Mack, Mack was a nigger.

Q. Your talking about the first one after Mack, right?

A. Right----

Q. Ok, that -- we are referring for the tape here, we are referring to the second murder----

Voice: I got it listed on my pad here, that it's number two.

Q. Alright, ok.

A. The second murder, I understand, ok, the second murder was a white male, between the age of ah, Jesus, he was between the age of ah, Jesus Christ, twenty-nine and thirty-five, he's between age of twenty-nine and thirty-five.

Q. Ok.

A. It was at the Green Parrot Bar in Lakeland, Florida.

Q. Now is this where it happened or this is where you met him?

A. This is where met him.

Q. At the Green Parrot?

A. Green Parrot.

Voice: Is this a "gay" bar?

A. Yes, it's a queer bar, it's been queer for a long time.

Q. That's in Lakeland, right?

A. In Lakeland, Florida, "Bird", you'll have to excuse me for mentioning him gentleman, but you know, he was a participant.

Q. Alright.

A. "Bird", I do not know his real name, the "Birdman" is what we called him, what I called him.

Q. Birdman?

A. Birdman, he had a tatoo of a bird on his hand, I -- I don't remember which hand it was.

Q. Ok.

A. Ok, Birdman was a participant, he was supposed to set one queer up so we could rob -- so I could rob him, me and him, you know to pick up five or ten dollars for some beer.

Q. Hu-huh.

A. And he was pretty hollow about it, I mean he was pretty bullshit, so I picked him up, you know and we took him to by apartment and robbed him.

Q. Do you know -- now what did he tell you his name was?

A. Swear to God, I don't remember, I mean -- I mean in a situation like that, when your picking up a queer----

Q. Ok, well, tell me something about him, I mean did he have long hair?

A. Alright, he had blonde hair, ah he had blondish hair, he was about your size, but----

Page -8-
Johnson, Wesley

Q. So he was about six foot?

A. Yeah, about six ah,----

Q. About hundred and ninety, ah a hundred and----

A. --no, he was about two hundred----

Q. About two hundred----

A. --and he was really big through the shoulders.

Q. Ok,----

A. Ah, in the apartment, I grabbed him around the neck and Bird put the ice pick to his chest.

Q. He stuck it in him?

A. No.

Q. He just put it to his chest?

A. Put it to his chest.

Q. Ok, now Bird did this?

A. Yeah, I killed him, I killed Bird too.

Q. Alright, now wait a minute, when you got in the apartment----

A. (not audible)

Q. --at your apartment, now this was in Lakeland, do you remember the address there? Or what street it was on or----

A. I,beleive this or not, I can't tell you because if I told you the apart ment or the street it would involve, if you can promise me though on this tape recording that the people, that they didn't know nothing abou it, they probably----

le Voice: They'd never be----

Q. We are not going to bother them.

A. Ok, well----

Classification	SHERIFF'S OFFICE SUPPLEMENTARY REPORT MONROE BRANNEN, SHERIFF POLK COUNTY, BARTOW, FLORIDA	Complaint No.

Q. I promise you that.

A. Alright, this chick turned me on to a per -- she moved in with a friend of mine and she paid a months rent----

Q. Right.

A. --and then she moved in with a friend mine and she had the apartment until she gave it to me because I was seperated from my wife and he was a good friend of mine and he talked to him, you know she had a months rent paid and she gave it to me----

Q. That's all----

Voice: Well, we just want to know the address we don't -- were not going to involve her.

A. The address was ah, tell me names of crooks, it was the "Crooknuts", swear to God, it was ah, the street was beside a welding company, the street was beside a welding place where they do welding.

Q. Is that where----

A. It was all -- it was in Wabash.

Q. (not audible) it was in Wabash----

A. (not audible)

Q. --where the apartment was at?

A. Right, any policeman in Lakeland knows where the Wabash area is,it was across the bridge, it was in the Wabash area----

Q. Hu-huh.

A. And like you go across the bridge and you pass two or three streets and there's a welding -- Hicks, the street was two or three blocks, two and three, between two and three streets down from Hick's Welding and there was a hotel on the other side, exactly on the other side of it and there' only one hotel I know of on that side of the street.

Q. The house was right across from the hotel?

A. About across from the hotel, it was between the hotel and Hick's Welding.

Q. Ok.

Investigating Officers:	Date

A. It had no electricity because, you know she never got together the money to pay for the electricity, so I said, "What the hell", you know I just knew it was a place to (not audible) and screw women at and this and I'll break your nose.

Q. Now, you say you got this guy inside the house and as soon as you got in the apartment you grabbed him from behind and "Bird" put a ice pick to hi chest?

A. I grabbed him around the throat and Bird put -- "Birdman", there you go, Birdman put an ice pick, you right around here----

Q. Alright---

A. --just teasing him with it, you know.

Q. What was said?

A. "If you ever (not audible) we'll cut off your nose".

Q. And then what happened?

A. The poor son-of-a-bitch gave us his money.

Q. How much, do you remember?

A. Around eleven dollars.

Q. Eleven dollars. Alright, and then what happened?

A. I promised him that nothing would happen to him if he would let me tie him up and put him in the trunk of the car.

Q. Is this his car?

A. His car, Chevy.

Q. Ok.

A. And drive him to an area and leave him, that way he could kick out the back seat, you know from the trunk you can kick out the back seat of the God Damn car, if you've got enough energy, I mean if you want to get out bad enough and you know, he would be there, you know. He asked that his wallet be left on the front seat, he wanted his wallet, you know he wanted his wallet there, I supposed it was contacts or semimental value or whatever. The car was wrecked on the way, the car was wrecked----

Page -11-
Johnson, Wesley

Q. Now wait a minute, so you tied him up and----

A. We tied him up, we put him in the trunk of the car.

Q. What kind of car was this?

A. It was a Chevy.

Q. -Do you know what color it was?

A. Jesus, it was ah, I think it was faded blue somewhere in that -- it was burned all to hell and back when I poured the gas all over it, but it was pale blue.

Q. Ok, now ah, faded blue Chevy, about what year, do you remember?

A. Yeah, it was around a sixty-eight, sixty-nine (not audible)----

Q. About the same as the other one though.

A. Yeah, it was, at the most it was seventy.

Q. Where did you drive the car to with him -- well, first of all let me ask you this, you tied him up in the apartment or after you put him in the trunk?

A. No, we put him in the trunk.

Q. And tied him up?

A. (not audible) rephrase that Gentleman, we did not tie him up, we put in the trunk, because I promised him that I would not kill him, gee, I'm sorry (not audible)----

Q. Ok, so----

A. He was in the trunk of the car?

Q. Who drove?

A. Bird did.

Q. Ok.

A. We were driving down the road and we were driving down the road and he w in the trunk of the car and the mirror was all fogged up, you know it wa

it wall messed up we could see out the back, you know if you turned aroun the mirror was all messed up, so me and Bird, Bird was trying, -- I said, "Hey, your fucking mirror messed, I'm going to fix your mirror so you can see behind you" and he's fixing the mirror and he ran off the road, cause we were fucking drunk (not audible)----

Q. Where did you hit something?

A. We had run off the -- it was in the Kathleen area.

Q. Where you ran off the road?

A. Where we ran off the road and the tire popped, the tire busted, one of the front tires.

Q. Ok.

A. And the hub marks ran, the hub marks on the road cause I took over driving, the hub marks, you know where the----

Q. Right.

A. --rim runs on the road----

Q. Righ.

A. --ran until where he was killed at.

Q. Alright, and then what was the area where you took him (not audible).

A. It was in the area where Steve Holt was killed, Steve Holt died on a -- he was a friend of mine in high school, it was around there I believe----

Q. (not audible) name of a street or a road or business or something near b

A. Not really, I don't know man, I just----

Q. How far out of Lakeland was this?

A. It was ah, it was in Polk County, it was about a mile and a half, I gues out of Lakeland.

Q. Ok.

A. Anyhow the car, I rounded a curve, I was driving, I rounded a curve and the car stuck cause when I hit the curve, like it was a hair-point, you know like a, you know----

Q. Road end?

A. Yeah, a hairpin curve and it stuck and I couldn't get it out cause, you know, the son-of-a-bitch (not audible) I couldn't get it out and I -- I thought to myself, I got to kill them both cause the cars stuck, so I got to kill them both, because Birdman -- the only reason I killed Birdman was because he made me kill the other dude.

Q. Alright, let's get to the first dude you've got in the trunk, now how -- now how did you come about killing him?

A. Alright, the car is stuck, there was a house about two hundred to three hundred yards away, it was off the corner, right off the curve, ok, I openned the trunk with the keys and I had the jack handle in my hand, cause I kept it in the car in case he, you know misbehaved, I didn't want to hurt the dude, only believe me, I didn't want to kill him, but I did, but I'm an asshole, but I had it there in case he misbehaved so I could tap him on the head and make him, you know lay down and be cool about it, ok, I openned the trunk and I knew I had to kill him.

Q. Now he was awake and----

A. He was -- he was just saying "Please don't (not audible)"----

Q. ok.

A. --he was saying the same thing, I would have said, he was saying, "Please don't hurt me, you got my money, just don't hurt me", that's exactly what I would have said.

Q. Alright, but what did you do?

A. I stabbed him a whole lot with the jack handle.

Q. Ok-----

A. --with the end of it.

Q. You talk about it like a jack handle used to jack up a car?

A. Jack up a car, the points are wedged in, I stabbed him in this part.

Q. In the chest area?

A. Yeah, with it and I tried to stab him in it cause I wanted him to die fast, I didn't want him to lay there and (making moaning noises) and all that shit and then I stabbed him with the knife, I made Bird watch

I made Bird man watch, then I took Bird man to -- the car was stuck there so I got in the other car?

Voice: What other car?

A. The other car that was there.

Voice: There was a car there that you stole?

A. No, there was just a car there.

Voice: Where -- where this car was at?

A. Yeah, where that car stopped.

Q. How did they know a car?

A. That car was just there and we got in that car, so we went to Waterloo, Nipper will know where Waterloo is, we went to Waterloo and I stabbed Birdman to death with an ice pick.

Q. Alright, wait, you're losing me here. (not audible) this car that you got in, another words, you stole that car?

Voice: Or did ya'll have that car there?

A. The car was there, never mind the God Damned car----

Q. Well, we need to know----

Voice: I got to know what kind of car it was?

A. I don't remember it, alright there was a car there.

Q. So how did you get it started?

A. I put the key in the ignition, there was a car there and I started the car, I took Birdman out to Waterloo, Nipper will know where Waterloo is----

Q. Ok.

A. --I took Birdman out to Waterloo and it was the grosses God Damn soundin because he was my same age and he was just about my same age and I stabb him to death with that God Damn ice pick.

). While you was in the car?

. No, when we got to Waterloo.

). Now what -- tell me, I don't know about Waterloo, tell me about Waterloo.

. Ok, Waterloo's a big lake, everybody used to go skinny dipping there and the YMCA bought it and made it into a private camp, you know, but then again a couple years later they said, "Ok, everybody that wants to go swimming can go there", so everybody went there.

). So you got there and you both got out of the car?

. Right, we were talking and I had the ice pick in my back pocket and I knew I had to kill him cause he made me kill the other dude because he wrecked the car----

). Hu-huh.

. --(not audible) the dude decided to kill the other dude cause they couldn' leave him laying there, you know hurting and everything and so, let me light this cigarette -- and so -- ah, that burns -- might as well get used to a burn, I'm going to burn in hell, but anyhow I took him to Waterl I stabbed him there a whole bunch of times with an ice pick.

). Ok.

. I punchered his lung, I remember that cause I heard it go "shhh" and I got sick.

). Hu-huh.

. (not audible)but what I'd done, that I had to go ahead and do it, then I took him in an orange grove----

). Near Waterloo?

A. No, in the Highlands.

Q. Alright, then you put him back in the car?

A. Yeah, I put him in the trunk.

Q. In the trunk and drove to where?

A. The Highlands, possibly the Highlands, I forget where it drove to, but it was up in possibly the Highlands and he was buried in an orange grove, the

Investigating Officers:	Date

orange grove had a long weeds in it, you know how it hadn't been tooken care of in quite a while.

Q. How did -- how did, I mean what did you use to dig up, was it a shallow grave that you dug?

A. It was pretty shallow, it was about (not audible)----

Q. - About a foot, foot and a half?

A. Yeah, and I bashed him in the head one time with the shovel and his head was caved in once with a shovel.

Q. Alright, how did or you had it with you, where did you get the shovel?

A. I just got it, I just stole it from someone, you know along the way. I've really got to piss, you know.

Q. Bashed in, you bashed him in the head?

A. I hit him in the head, yeah bashed him in the head with a shovel, the end of a shovel and then covered him up with dirt.

Q. Now did this -- this white male you told us about that you and Birdman killed or that you killed and Birdman was with you, did that hit the papers?

A. I don't know, I went to Lakeland.

Q. Well, do you know if they ever found Birdman?

A. I really don't know.

Q. Alright, well see that's why we got to really narrow that down as to where that's at cause----

A. Can I -- Can I -- alright, it was in an orange grove, -- can I take a piss?

Q. Alright, we are going to stop the tape while you go to the bathroom and then we'll start again.

Ok, now we are continuing and we want to talk about the exact location as to where you buried Birdman and you told us it was in the Highlands----

A. Possibly in the Highlands----

Page -17-
Johnson, Wesley

Q. In the Highlands? In an old orange grove----

Voice: It wasn't taken care of-----

Q. How far out of Lakeland was this orange grove that----

A. Not very far, because Lakeland is pretty much (not audible) it would be a mile, mile and a half at the most, at the most.

Q. Hu-huh.

A. It could probably -- it would probably, you know it could be ah, thirty blocks as far as I remember (not audible)----

Q. Do you remember a road that it sits off of? Just a road or something like that?

A. Alright, a road or----

Q. What about a business or something like that, some kind of landmark there where it would be near. Were you on a paved road when you turned into it?

A. Right, right, we were -- yes, sure, for sure we were on a two laned paved road and when we turned off into the orange grove.

Q. Was it east of Lakeland or west of Lakeland, north, south or you don't remember?

A. I really don't know, I don't remember, but I can tell that ah, he had on a pair of brown boots when he was buried, one of the boots was off and so in the grave one of the boots was probably on or partially on, the other boot was thrown in the grave and he had on a pair of denim pants and the shirt I don't remember, the pants were denim, his wallet was removed ----

Q. Alright----

A. --and the dude had brown hair about as long as mine is (not audible) and he was just young kid.

Q. Ah, and you----

Voice: Was he from Lakeland area or do you know?

A. I met him in the Lakeland area----

Page -18-
Johnson, Wesley

Voice: But you don't know if he was--

A. For sure I don't know if he was from the----

Q. If you was going to tell me how to get to this orange grove, I was a tourist in there----

A. (not audible)

Q. --and we were at the Lakeland Police Department say, which way would you tell me to go? Go out past this or that or what?

A. Alright -- (not audible) your Lakeland, let me say it's been long since I've in Lakeland, but I have my days pretty clean except for killing three dudes, but ah, you would go out past the -- go out past Highlands, that's a road, it's a road, my wife used to work at the 7-11 she got robbed out there once.

Voice: Out past Highlands?

A. Yes, Spook Hill, you go out past the Spook Hill probably.

Q. Ok, I know where that is.

Voice: About in that direction?

Q. I know where Spook Hill is, I've been there. This road----

A. Let me say this, I think so, I'm not really sure because I got really mixed up and all in all the driving that I was doing, but it's out there. I can tell you how he was buried.

Q. You could show somebody where he was buried though couldn't you?

A. No, I -- I seriously----

Q. You couldn't?

A. I cou -- I don't know.

Q. Then if you was taking back to the area, would it refresh your memory that----

A. Oh, if I was taking back, yeah, but ah,(not audible) area where he was buried, you could tell there was a grave there.

Q. Alright, let me ask you, this two lane paved road that you turned off

of to go into the grove, how far into the grove did you go?

A. Ah, about five to six hundred yards and then we turned on, you got your five hundred, six hundred yards.

Q. Alright.

A. Then we turned on to a spray truck rig, remember like----

Q. Right.

A. --when the groved it, down a little dirt road going between the grove----

Q. Ok.

A. --and we drove down -- I drove down approximately another maybe another two hundred and fifty yards to five hundred yards.

Q. When you got to this spray trunk road, you turned right or left?

A. Right -- ah, left, left.

Q. You turned left?

A. Left.

Q. And you stopped on the spray truck road?

A. About two hundred sixty yards----

Q. And it was right -- on the right hand side or left hand side of the spra truck?

A. Right hand side.

Q. Right there by the spray truck road?

A. About fifty yards.

Q. Ok.

A. He was buried between two trees.

Q. Were they orange trees?

A. Yeah, he had on a pair of brown boots, he had on one brown boot and

one brown boot was (not audible) on top of him.

Q. Now let me ask you this, what-- when you stabbed him at Waterloo, you put -- stabbed him and killed him, did you put him in the trunk of the car or in the seat of the car or where?

A. In the trunk.

Q. In the trunk.

A. He was also kicked several times and it was possible water in his lungs because I tried to drown him.

Q. Where at Waterloo?

A. Somewhere (not audible), he shoved un -- he was stabbed in the water with an ice pick.

Q. Ok.

A. And kicked.

Q. You dug the grave and buried him, then what did you do?

A. I left and I got drunk, and I got layed.

Q. Alright, well let me ask you this, you said here, going back you killed you and Birdman killed, or you killed this second subject that you killed a white male homosexual with the blonde hair, right?

A. Right.

Q. You -- and you said here you put, you stabbed with the -- in the chest with the ice pick and the car tool----

A. Tire tool and everything.

Q. --and you made Birdman watch, right?

A. Right.

Q. Then what -- then you left with Birdman?

A. We left we went tot he Union 76 Gas Station and got the gasoline, the Union 76 is by the Interstate.

Page -21-
Johnson, Wesley

Q. That's what -- that what you -- I didn't understand cause you left that out when you was telling us about----

A. Oh, well, I said I wouldn't go there where I got gas, ok I----

Q. And then you went back and----

A. --poured the gas over him and burnt him.

Q. Alright, then you went back to the----

A. Scene of his murder,----

Q. Right---

A. --whatever.

Q. Ok.

A. And then we poured the gasoline over the car.

le Voice: Birdman help you?

A. I poured the gasoline in the car.

le Voice: Where was Birdman at this time just sitting----

(END OF TAPE)

Q. Continuing on side "B".

le Voice: One thing I want to ask you about is when -- when you ran off the road and got the flat tire and all of a sudden this other car appears, I don't -- I don't quite understand how you----

Q. How you got the keys, how -- how did you get the keys with it? Was the car just sitting there, ya'll stole the car or what?

A. (not audible) the car was there----

Q. Hu-huh.

A. --like I said the car was there.

Q. Well, after you killed Birdman and everything, you know, you buried Birdman, right?

A. Right.

Q. And then you got back in the car and you went and got laid, right?

A. Right.

Q. Well, what did you do with this car, did you ditch it somewhere?

A. It wasn't his car.

Q. But what did you do with it, did you ditch it? It wasn't your's either was it? So you said you left and went back into Lakeland, got drunk and laid, a little drunker and laid, but what did you do with the car, you had to do something with it unless it was yours.

A. The car just happened to be there, the car got ditched.

Q. And you ditched the car, remember what----

A. I left the car.

Q. You left it where, near the orange grove or in town?

A. No, I left it town somewhere.

Q. Would there be ah, would there be blood in the trunk of that car?

A. No.

Q. Well, you said you stabbed him several times.

A. Yeah, but there was a blanket wrapped around him before I put him in the trunk.

Q. Where about, in the grave was there-----

A. Blood, there should -- yes, it was a blanket.

Q. Ok----

A. There was a blanket----

Q. You didn't see any blood in the trunk of that car though?

A. No, I checked pretty good, there wasn't no blood.

Q. You wiped that car down for prints and all or did you think about it.

Classification	SHERIFF'S OFFICE SUPPLEMENTARY REPORT MONROE BRANNEN, SHERIFF POLK COUNTY, BARTOW, FLORIDA	Complaint No.

A. (not audible) yeah, I wiped it down for prints and everything.

Q. And the best that you can remember how long ago was this, about this about this white male homosexual and Birdman? How long after the first murder, after you -- after you----

A.

A. Well, after the first mur-- this Birdman and the queer happened this year, within the last three or four months (not audible)

Q. Ok, and it happened when you were seperated from your wife----

A. From my wife.

Q. You and her----

A. Right.

Q. --got into a little conflict----

A. Right.

Q. --and you hauled buggy back to Lakeland.

A. Right.

Q. Remember whether it was Friday night or Saturday night or----

A. It was -- I'm not really sure, it might have been -- ah, I'm not really sure, I can't even say what night it was (not audible), but it wasn't a Monday, I know that, you know.

Q. Alright, I have a question for you. Why are you telling us this?

A. Because I'm fucking tired of waking up in the middle of the night thinkin, about it.

Q. It's been buggin you, huh?

A. Yeah, I think that either I tried -- either I tell you people this, you know, I figure if I come here and tell you people this and the most that will happen, -- alright, I figure if I come here and tell you people this that (not audible) maybe I'll spend two or three days in the drunk tank--

Q. Hu-huh.

A. --and it will relieve my God Damn conscious----

Investigating Officers:	Date

Q. Hu-huh.

A. --if not----

Q. Ok, then your wide awake and you know what your doing----

A. Yeah, I'm wide awake, yeah, I'm wide awake, I talked to my wife.

Q. You know what your saying?

A. Yeah, I talked to my wife before we come down here, I explained it to her before we went to the 7-11 and called, I explained why that I wanted to call the police and talk to them, is because I want, you know.

Q. To get it off your chest, to get it off your mind.

A. Yeah, I mean, whatever, you know and I'm a real ass, I figure I'm (not audible) grade "a" assholes and so I might as well do whatever real greater assholes do.

Q. Let me ask you this, Wesley, have you been in any other trouble other than these murders or anything since you got out of the boys home and being arrested in our city at the Function Junction for a little fight, have you been in any other trouble of any kind any where----

A. No.

Q. --since you got of Okeechobee, you've been arrested one time, is that right and that was here in Daytona Beach?

A. I've got several parking tickets----

Q. We're talking about where you were locked up----

A. No.

Q. Just the one time and that was here in Daytona Beach?

A. Right.

Q. --as a result of a fight?

A. Yeah, and I lost, more or less.

Q. Had -- now when commited these things that are before -- you -- when you left Lakeland you came to Daytona, right?

A. No, when I left Lakeland I went to Gainesville, that's where I met my wife.

Q. Yeah.

A. I lived with her for a while in Melrose, in the city of Melrose (not audible).

Q. Yeah, I know where that is.

A. Yeah, ok, we got married in Gainesville-----

Q. Hu-huh.

A. --and then we moved here to Daytona.

Q. How long did you move to Daytona now, do you remember?

A. About two years ago, I committed the first murder before I married my wife, when I killed "Mack".

Q. Hu-huh.

A. And I met my wife and----

e Voice: Did you tell your wife about the murder, the first one at all before the night, I mean it doesn't make any difference, you know----

A. Then, I'm not going to say.

Q. Ok, (not audible), well, I was just curious for my benefit, that's all---

A. Well, then I'll, you know, I'm not (not audible)

Q. (not audible) is irrevelant, what your tell us was important.

A. Yeah.

Q. Ah, can you remember anything that you might have left out.

A. Alright, (not audible) the significant parts that I can remember is the last three killings have happend in the same night, this is the best I can remember, alright, the dude was killed -- the first one was killed where he was put in his car and burned, there was a house close by about hundred and fifty yards away and it was on a hairpin curve, like, you know a hairpin or a short curve, everything curved, he was burned, there was tire tracks leading, it went around the lake, now before it got to

Classification	SHERIFF'S OFFICE SUPPLEMENTARY REPORT MONROE BRANNEN, SHERIFF POLK COUNTY, BARTOW, FLORIDA	Complaint No.

the curve where he was burnt, went around the lake, the tire tracks, the blown out tire was around the neighborhood of Hennessee Avenue, Hennessee -- around there, there was a small store, sort of like a 7-11, but it was half-assed abandoned, you know half-assed run that's where we pulled into -- I pulled into the parking lot, the tire had gone out down the street from there, I pulled into the parking lot there, we realized the tire -- you know, I realized the tire was gone see man, (not audible) by the seat of your pants so we backed out of there and drove it back and there should have been tire marks from you know, like rim marks----

Q. Hu-huh.

A. --from that 7-11 on back.

Q. Ok, ah, if you don't have anything else we'll conclude the interview for right now and again for the tape, I want to ----

A. Inform me of my rights.

Q. No, to re -- well, more or less, re-emphasize, then have you confirm that this statement that your giving is own your own ----

A. (not audible)

Q. --it's on your own accord----

A. -- I want a cell by myself----

Q. And your not----

A. --ok.

Q. And your not under any pressure to make this-- this statement.

A. No, they're not twisting my arm or beating me in my head----

Q. Alright.

A. --I'm just saying it cause I want to.

Q. Ok, end of interview, the time is 2:10 a.m., 9/6/75, Det. J. H. Jenkins.

sf

Sheriff's Form No. 41A

Investigating Officers:	Date

Classification	SHERIFF'S OFFICE	Complaint No.
Item #4	SUPPLEMENTARY REPORT MONROE BRANNEN, SHERIFF POLK COUNTY, BARTOW, FLORIDA	CC# 204506 P4 36207 36211 37618

The date is September the 8th, 1975, the time is now 10:12 A.M.. The location is the Lakeland Sub-Station of the Polk County Sheriff's Department. Present is Lt. Chuck Keeney, Polk County Sheriff's Department. I am present with and I am going to interview MRS. PATRICIA JOHNSON, the wife of Wesley Irving Johnson. Mr. Wesley Johnson is in custody in the Polk County Jail at this time charged with three counts of murder. This will be in reference to CC#'s 205406, it's a homicide investigation into the death of Caleb McDowell, offense occurred on August the 3rd, 1973, CC# 36207 and 36211 in reference a homicide investigation of one John Mitchell Arnsdorff on July 29th, 1975 and CC# 37618, title "Missing Person", one James Wagner, who is now a subject of a homicide investigation. Mrs. Johnson came forward this date, voluntarily to give a recorded statement concerning information he or she has during -- received during conversations with her husband, Wesley Johnson.

Q. Mrs. Johnson, would you state for the record your full name and date of birth, please? Speak up.

A. Patricia Johnson, August 24th, 1944.

Q. Would you speak up a little bit now, your voice is kind of soft here an I want to make sure they hear you.

A. Patricia Johnson, August 24th, 1944.

Q. Where do you live, Mrs. Johnson?

A. 314 University Blvd. in Daytona Beach.

Q. You live there with Mr. Johnson----

A. Yes----

Q. --up until two or three days ago?

A. Yes.

Q. Alright, on the morning of the 6th of September, this past Saturday, yo husband, Wesley Johnson made a phone call to the Daytona Police Departm and did advise them that he wanted to talk to them about three murders committed in Polk County, is that right?

A. That's right.

Q. Speak up ma'am, we can't hear you.

Sheriff's Form No. 41A

Investigating Officers:	Date

Classification	SHERIFF'S OFFICE SUPPLEMENTARY REPORT MONROE BRANNEN, SHERIFF POLK COUNTY, BARTOW, FLORIDA	Complaint No.

A. That's right.

Q. At any time prior to him making this phone call, did he discuss this with you?

A. Yes.

Q. Alright, would you now at best you can remember, tell me in some -- try to get some order to it as to the death of the, of Mr. McDowell in the trunk of his of '73 and then the deaths of Arnsdorff and Wager recently, would you talk about that for me, please?

A. The first one, in '73 he just told me that he had killed somebody, he'd never talked about it unless he was drunk and he said he was a queer and he shot him and put him in this car and burned him up in the trunk.

Q. Did he say that this was a black man?

A. Yes.

Q. It was -- he did say----

A. He said it was a nigger.

Q. A nigger? Alright, that's all he ever discussed about that?

A. Yes.

Q. How long have you been married to Mr. Johnson?

A. A little over a year.

Q. How long after you were married to him did he discuss this with you?

A. He told me about it before we were married.

Q. Did you live together before you were married?

A. Yes, for six months.

Q. Six months?

A. Yes.

Q. Was it during that period he told you about it?

A. Yes.

Investigating Officers:	Date

Classification	SHERIFF'S OFFICE SUPPLEMENTARY REPORT MONROE BRANNEN, SHERIFF POLK COUNTY, BARTOW, FLORIDA	Complaint No.

Q. Alright, now that's all he told you about the -- the black man in the trunk of the car?

A. Yes.

Q. Now there's two other, ah, one other homicide for sure, Mr. Arnsdorff's where he was burned in the trunk of his car in July. Did he talk to you about that?

A. Yes, he just told me that he and Dennis did it and they burned him up in the car too.

Q. Did he mention Dennis's last name?

A. No, but-----

Q. Did he call him any other name?

A. His name was -- his nickname was "Lurch".

Q. And he did tell you that "Lurch" and he himself did murder Mr. Arnsdorff

A. Yes.

Q. Did he go into any detail of the murder to you that you can recall?

A. He said he robbed him in his apartment where he was staying here.

Q. Now this is Arnsdorff's apartment?

A. I don't know, in the apartment that my husband was staying in.

Q. He robbed him there?

A. Yes, and they carried him out and put him in the trunk of the car and they took him out and they killed them and they burned him up.

Q. Did he say how he killed him?

A. He stabbed him with a tire iron.

Q. He did stab him with a tire iron?

A. Yes.

Q. Alright, now there's another party involved, a Mr. James Wagner, did he tell you anything about that?

Investigating Officers:	Date

A. He told me that he was with him and he helped.

Q. He helped him kill Arnsdorff?

A. Yes.

Q. Alright, then what happened to Mr. Wagner after that?

A. I don't know.

Q. He didn't mention anything about Mr. Wagner?

A. No.

Q. Did he mention thing about burying a body in a grove?

A. No.

Q. His statement to us that was after they killed Arnsdorff they also stabbed Wagner with an ice pick, put him a trunk of the car they were driving and took him to a grove. He didn't discuss this with you?

A. Yes, she did, he said, he ah, -- he -- he said he stabbed him with the knife pick, this is what he told me when we were walking down to the with the police and they buried him.

Q. Did he say, like did he generalize this to where he buried him?

A. No.

Q. What do you think made your husband decide to turn himself in?

A. He was having bad dreams about it, he told me he didn't know if he real did it or if it was a dream and it was bothering him so he called the police to have them check on it, he says "If it didn't happen , I'll jus be arrested for wasting their time and being drunk and they'll let me go", he said he really didn't know if he did it.

Q. What was his reasons for not know whether he did it?

A. I don't know.

Q. Was he drunk? Did he say he was drunk at the time this all happened?

A. Yeah, he was drunk.

Q. Did he ever mention whose car they were in on the night, whose car they were driving?

Classification	SHERIFF'S OFFICE SUPPLEMENTARY REPORT MONROE BRANNEN, SHERIFF POLK COUNTY, BARTOW, FLORIDA	Complaint No.

A. Dennis's.

Q. Did he describe the car to you?

A. No.

Q. Did he ever mention any kind of a particular kind of car? Did they say how they transported Wagner's body?

A. Who was Wagner?

Q. Well, the one he stabbed with the ice pick. Speak up, will you, please

A. No, he never he said anything about that.

Q. You know after they stabbed him and they took him out to bury him, did they say how they carried him out there?

A. No.

Q. The most details he told you was in reference to the Arnsdorff murder, right? The one where they burned in the trunk?

A. Yes.

Q. I know your -- these names are kind of confusing to you, but the first one, the black man was McDowell, the second one was a white man named, Arnsdorff who both of them were burned in the trunk and Wagner is one we have not found yet, whose supposed to be buried some place, but -- but he did mention that fact that Wagner was with him and Dennis at the time they did kill Arnsdorff?

A. Yes.

Q. Did he ever mention the name "Bird", "Birdman" or something like that?

A. Yes.

Q. Who was he referring to then?

A. I don't know, he just said that "Birdman" was with them, ----

Q. "Birdman" is the one they stabbed? That's Wagner.

A. Ok.

Q. That is that make it clear to you?

Investigating Officers:	Date

Classification	SHERIFF'S OFFICE SUPPLEMENTARY REPORT MONROE BRANNEN, SHERIFF POLK COUNTY, BARTOW, FLORIDA	Complaint No.

A. Yes.

Q. Can you speak up a little bit?

A. Yes.

Q. Alright, is there anything else that you might add to this that would might be helpful in this investigation?

A. I don't know anything else about it.

Q. And this statement, you've given me now, is free and voluntary?

A. Yes.

Q. And you came here of your own free will?

A. Yes, I did.

Q. I haven't promised you anything or threated you in anyway to get you to make this statement?

A. No, you haven't.

Q. And you realize this man's wife and you are not required to testify against him?

A. Yes.

Q. And this -- this is -- your doing this voluntarily to bring the truth, right?

A. Yes.

Q. Is this statement the truth to the best of your knowledge?

A. Yes, it is.

Q. This statement concludes at 10:19 A.M..

sf

Investigating Officers:	Date

Classification

SHERIFF'S OFFICE
SUPPLEMENTARY REPORT
MONROE BRANNEN, SHERIFF
POLK COUNTY, BARTOW, FLORIDA

P5

CC# 36211
C/R# 204506
C/R# 37618

Polk County Sheriff's Department, Lakeland Sub-Station. Phone conversation between Lt. Chuck Keeney, Polk County Sheriff's Department and Patricia Johnson, wife of Wesley Irvin Johnson.

Johnson: ----already caught Dennis on August 8th and you had been lookin for him on -- I mean on August 6th.

Keeney: Right.

Johnson: And you had already been looking for him.

Keeney: Right.

Johnson: To (not audible) you all's talk with Lurch, that his name kept coming up.

Keeney: Right.

Johnson: Irvin didn't know that, that's why he never said nothing about nobody.

Keeney: Well, see that's why I told him yesterday that, you know we -- we purposely didn't mention anything to him waiting for him to tell us the whole truth----

Johnson: He said----

Keeney: --but he would tell us up to a point, but he never told us who h was with and he never told us what car he used and we knew see, he -- we knew he was holding back something and then when I put on him yesterday, I think that got him to thinking, you know.

Johnson: Yeah, he told me last night on the phone, when I told him abou that piece, what was in the Daytona paper, I've got it with me, he says if I -- if ya'll let me see him for ten minutes----

Keeney: Alright.

Johnson: --that he can read that piece of paper, he'll tell you anything everything signed, any papers you want and he'll -- he's willin to take a lie detector test to prove that he didn't kill them people himself.

Keeney: But he was there?

Johnson: Yeah, he was there and he watched them.

Sheriff's Form No. 414

Investigating Officers: | Date

Keeney: Alright, well that's----

Johnson: And he'll tell you that too.

Keeney: Alright, well that's all want to know and I'll let you see him for more than ten minutes, if you'll get him to tell me the truth.

Johnson: He will.

Keeney: I want the truth, I don't want know fabricated stories.

Johnson: He won't, he's never told me the truth and I talked to him last, but I don't know about ya'll jails down here, but in Daytona they sit and listen on the phone.

Keeney: Well, we don't, well, we can listen on the phone, but we don't -- we respect the man's privacy, we don't do that.

Johnson: Yeah, well----

Keeney: Well, when your talking to him reading his things, there is going to be somebody there with you.

Johnson: Yeah.

Keeney: Well, we can't let you be in a room by yourself.

Johnson: Well, I understand that, but he just wants to see that paper and see me for ten minutes and he said to tell you that and I have---

Keeney: Do you have a way to get to Bartow?

Johnson: Yeah, his brother going to in from Plant City in a few minutes.

Keeney: Well, I'll tell you what I'll do, ah, if you'll me whenever his brother gets in there I'll make arrangements to meet you in Bartow Norm Reed and I and we'll sit down and talk this thing over.

Johnson: Ok.

Keeney: Ok, now he -- he must realize he has an attorney who is -- has tol him not to talk to me, but he-----

Johnson: He asked me, he told me, he says, if you'll let him see me, and let him read that paper that he won't even need an attorney.

Keeney: Very good, alright that's -- that's the best news, all he's got t do is tell us the truth and I think he'll feel a lot better and whatever the out come is the fact that he works with us on this going to help him in some way.

Johnson: Yes, I know he can go to prison for being an accessory to murde and everything else.

Keeney: Well, to be honest with you, we didn't believe his story, his wh story from the beginning, you know, we knew he was covering up f somebody.

Johnson: Well, yeah, he just wants to read for himself that Lurch had al told on him and then he's -- he's going to tell you everything all.

Keeney: Alright, well I'll -- you call me as soon as your brother or wh ever is coming there gets -- gets there.

Johnson: Yeah, they just called from Plant City.

Keeney: Alright, we'll make arrangements to meet you in Bartow.

Johnson: Ok.

Keeney: Ok.

Johnson: Thank you.

Keeney: Thank you ma'am.

sf

Portion of Closing Argument, March 25, 1976

Assistant State Attorney Monterey Campbell:

MR. CAMPBELL: They drive out to Waterloo and while they are sitting there talking about what is going to be done with the $6 -- $6. Remember? What did he tell Mrs. Johnson they had taken? $6 off of the guy. When they are trying to decide what they're going to do with the $6 and the watch and they get into an argument about the watch. Then Lurch starts getting nervous about the icepick, and he's walking up and down, and he says to Johnson, "Grab him." And I asked him, "How do you know who he was

SYDNEY C. NEIL
OFFICIAL COURT REPORTER
TENTH JUDICIAL CIRCUIT
BARTOW, FLORIDA 33830

HALL OF JUSTICE BLDG.
813-533-3158